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IN THE
SUPREME COURT OF THE UNITED STATES

October Term 1993

ROBERT HADEN KING JR.,

Petitioner,

v.

NEIL BROWN, SUPERINTENDENT
OF THE CLALLAM BAY CORRECTIONS CENTER,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF OF THE ALABAMA DISABILITIES ADVOCACY PROGRAM AND THE SOUTHERN POVERTY LAW CENTER AS AMICI CURIAE IN SUPPORT OF THE PETITIONER

Ruben W. Cook
Alabama Disabilities
Advocacy Program
University of Alabama
School of Law
Box 870395
Tuscaloosa, AL 35487
(205) 348-3909

Morris Dees*
Southern Poverty Law
Center
Post Office Box 2007
Montgomery, AL 36102
(205) 264-0286

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*Counsel of Record

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ISSUE ADDRESSED BY THE AMICI CURIAE

Did the court of appeals err by failing to make an independent review of the state trial court's competency determination, thus upholding in a habeas corpus proceeding the state court's application of an unconstitutional standard for determining competency?

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INTEREST OF THE AMICI CURIAE

The Alabama Disabilities Advocacy Program (ADAP) is the protection and advocacy system for the State of Alabama established pursuant to federal law to protect and advocate for persons with disabilities. ADAP is a part of the University of Alabama School of Law's Clinical Law Programs, and administers three primary programs.

The Protection and Advocacy for Persons with Developmental Disabilities (PADD) Program is established pursuant to the Developmentally Disabled Assistance and Bill of Rights Act of 1975, Pub. L. No. 94-103, 42 U.S.C. § 6000 (1983). This program advocates on behalf of individuals who have severe, chronic disabilities which are manifested in the person's life prior to age 22.

The Protection and Advocacy for Individuals with Mental Illness (PAIMI) Program is established pursuant to the Protection and Advocacy for Mentally Ill Individuals Act of 1986, Pub. L. No. 99-319, 42 U.S.C. § 10801 (Cum. Supp. 1994). This program advocates on behalf of individuals who have a diag-

nosis of mental illness and who are residents of 24-hour treatment facilities, or who are within 90 days of release from such facilities.

The Protection and Advocacy of Individual Rights (PAIR) Program is established pursuant to the Rehabilitation Act. This program has authority to protect and advocate for services to persons with disabilities who are not eligible for services through the PADD or PAIMI programs.

Under its federal legislation, ADAP is authorized to pursue legal, administrative, and other appropriate remedies to protect and advocate for the rights of persons with disabilities. Among ADAP's stated objectives is advocacy for appropriate treatment and services for persons with disabilities in the criminal justice system.

ADAP has examined this case and determined that several of the issues presented are of such importance to persons with mental illness who are criminal defendants that ADAP should offer its assistance to the Court.

The Southern Poverty Law Center, a nonprofit organization with 330,000 members, was founded to promote justice and tolerance through litigation and education. The Southern Poverty Law Center has been involved in a number of cases concerning the rights of defendants with mental illness. It shares the views of the ADAP regarding this case, and urges this Court to consider fully the important issues raised by the Petition for Certiorari.[1]

REASONS FOR GRANTING THE WRIT

1. The Petitioner in this case, Robert Haden King Jr., lived a life free of controversy until suffering serious head injuries, brain damage, and permanent neurological problems as a result of an airplane crash in 1979. The mental illness induced by the injuries suffered in this airplane accident caused dramatic behavioral changes in King which led to his legal difficulties. Most significantly for the purposes of the Court's

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[1]Pursuant to Rule 37.2 of this Court, both the Petitioner and the Respondent have consented to the participation of the amici curiae, and letters of consent are being filed with the Court.

consideration of this case, King's mental illness precluded him from acting rationally at the time that the State of Oregon was acting to prevent him from reaping the benefits of his plea bargain.

The record in this case reveals that the state did not fulfill its obligation under Hudson v. McMillan, 112 S. Ct. 995 (1992), to provide King with adequate medical care. Oregon authorities were well aware of King's mental illness; indeed, he was physically arrested for the Oregon charge while an inpatient at Fairfax Mental Hospital in Seattle, Washington. King's doctors had advised that his mental illness be treated with four prescription medications: Dilantin, Haldol, Tegretol, and Lithium. However, because of the pressures of his situation, including the death threats against him, while in custody in Oregon, King had not been taking his medication as directed. Contrary to their duty under Hudson v. McMillan, prison authorities did not insure that King was properly medicated, and therefore his mental condition worsened. Moreover, following King's suicide attempt on March 10, 1984, during which he was found hanging uncon-

scious in his cell, King was chained to the floor of his cell for three days in a spread-eagle position.

The Alabama Disabilities Advocacy Program and the Southern Poverty Law Center submit that this case presents as clear a case as could possibly be brought to this Court of how a prosecutor took advantage of a mentally ill defendant, and how the state courts did not compel the evaluation of King's mental competency under the standard dictated by the requirements of due process. The lack of meaningful review by the Ninth Circuit, through its decision to defer to the trial court's competency determination without any independent review of that determination, provides this Court with a compelling opportunity to enunciate clearly the need for a federal court in a habeas corpus action to treat the issue of mental competency as a legal issue requiring independent review to ensure that a state has applied the constitutionally mandated standard of competency.

In light of the egregious facts of this case and the need to preserve the threshold level of competency required to permit criminal prosecution of a defend-

ant, this Court should review the decision of the court below.

2. The competency doctrine has a long, venerable legacy and finds its roots in seventeenth century England. The common law found it necessary and proper to protect those who had become "mad" from judgment, prosecution, and even arraignment. See 4 W. Blackstone, Commentaries *24. This Court has recognized that the prohibition against proceeding against the incompetent is "fundamental to an adversary system of justice," Drope v. Pape, 420 U.S. 162, 172 (1975), and that "conviction of [the] legally incompetent violates due process." Pate v. Robinson, 383 U.S. 375, 378 (1966).

The protection of the incompetent and the concomitant requirement of competency for participation in the judicial process, including standing trial or deciding to waive constitutional rights before trial, promotes important societal and individual interests. Among other things, the criminal process maintains its moral dignity, decorum in trial proceedings is preserved, and the public is assured that possible erro-

neous convictions have been avoided and that the outcomes produced by the criminal system are reliable and subject to respect.

In addition, the autonomy of the individual, central to much of Western ethical and political theory, is preserved. See Faretta v. California, 422 U.S. 806, 834 (1975) ("respect for the individual . . . is the lifeblood of the law"). By requiring competency, the defendant is ensured fair treatment and is permitted to control the conduct of his defense. The purposes of punishment also are served because only the competent are subjected to judgment. The public receives retribution for the convicted's criminal acts while being deterred from engaging in like criminal conduct, whereas the convicted is rehabilitated. Those who are incompetent, on the other hand, receive treatment for their mental conditions with the hope of rendering them competent.

As this Court noted most recently in Godinez v. Moran, 113 S. Ct. 2680, 2688 (1993), the due process clause imposes a constitutional burden on the states to ensure that the individuals accused of crime are competent to proceed. In addition, the due process

clause establishes a threshold standard for competency. See Dusky v. United States, 362 U.S. 402 (1960) (per curiam). In order to maintain the viability of the competency doctrine and to ensure that its worthwhile purposes are fostered, the federal courts on habeas review must vigilantly require the states to observe this threshold standard for competency.

3. In Godinez v. Moran, supra, a review of a habeas corpus action, this Court concluded that a defendant pleading guilty or waiving the right to counsel must meet the standard set forth in Dusky v. United States, supra. In Dusky, the Court found that it was not enough for a trial court to find that the defendant was "oriented to time and place and [has] some recollection of events." 362 U.S. at 402. Rather, the Court concluded, the appropriate standard is whether the defendant has "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding" and has "a rational as well as factual understanding of the proceedings against him." Id.

The record of this case demonstrates that the Oregon trial court did not attempt to satisfy this stand-

ard, and did not make the factual inquiries necessary to reach a reasoned conclusion regarding the competency of King. In fact, the trial court merely concluded that King was able to "understand the nature of the proceedings" and was "able to participate in his defense" (Petition for a Writ of Certiorari at 14). The competency hearing took place without any active participation by King, who remained entirely silent throughout the proceeding. King was represented by an appointed attorney, with whom King was not cooperating.[2] The trial court concluded that while King suffered from a "mental defect" and engaged in behavior which was "bizarre," he was "able to aid and assist in his own defense and cooperate with his counsel," was "able to understand the nature of the proceedings against him," and was "able to participate in his own defense" (Petition for a Writ of Certiorari, Appendix G at 55a-56a).

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[2]Jerry K. Larsen, M.D., a psychiatrist who examined King shortly before the hearing, found that King suffered from paranoid ideation against his attorneys, which resulted in his refusal to cooperate with his attorneys (See Petition for a Writ of Certiorari, Appendix H at 61a).

The factual support for these conclusions was suspect. The court's determination rested solely on the testimony of a state psychiatrist, Wesley Weissert, M.D., who was found to have made numerous misrepresentations to the court during the course of his testimony[3] (Exh. 119 at 501-02). Weissert informed the court that he had interviewed King for 30 minutes several months earlier while King was hospitalized at Oregon State Hospital. However, as noted above, the significant fact concerning the trial court's conclusions was that the court never addressed the requirement that King be shown to have a rational understanding of the proceedings, as opposed to a mere factual understanding. In addition, there was no conclusion by the trial court that King could rationally consult with his attorney. Indeed, the actions of King in the time period leading up to the trial court's competency determination can only be characterized as irrational, from his behavior in the courtroom to the very fact of

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[3]Weissert's misrepresentations concerning the diagnosis and treatment of King drew a rebuke from the court: "I am not complimentary of Dr. Weissert's way that he handled this, Mr. Lyons. I agree with you. I certainly don't think that is a pattern of how these matters should be handled" (Exh. 119 at 518).

his indecision concerning whether to enter his guilty plea.

The distinction between the standard utilized by the Oregon trial court and the standard mandated by Dusky is material. Indeed, the Dusky case itself involved the reversal of a conviction based on a factual showing that in finding the defendant competent the trial court had relied simply on evidence showing that the defendant was able to understand the charges against him and was able to assist his attorney by providing information concerning himself. In Lafferty v. Cook, 949 F.2d 1546, 1551 (10th Cir. 1991), cert. denied, 112 S. Ct. 1942 (1992), the court described the rationality component of the Dusky standard as requiring a finding of incompetence "if his mental condition precludes him from perceiving accurately, interpreting, and/or responding appropriately to the world around him." The court in Lafferty found reversible error in a state trial court competency determination which, as in the present case, concluded that the defendant had an intellectual understanding of the proceedings but which omitted any finding that the defendant could rationally perceive and appreciate the

true meaning of what was transpiring. See also United States v. Hensi, 901 F.2d 293 (2d Cir. 1990) (defendant had intellectual understanding of charges against him, but his impaired sense of reality substantially undermined his judgment and prevented him from cooperating rationally with his lawyer).

This case demonstrates the need for this Court to clarify the point that competency determinations are mixed questions of law and fact requiring independent review,[4] and highlights the need for federal evidentiary hearings in habeas corpus proceedings in accordance with the principles set forth in Townsend v. Sain, 372 U.S. 293 (1963).

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[4](See Petition for a Writ of Certiorari at 12-13 (for a discussion of the split in the circuits on this issue).)

CONCLUSION

The Alabama Disabilities Advocacy Program and the Southern Poverty Law Center join in urging this Court to grant the Petition for a Writ of Certiorari submitted by Petitioner Robert Haden King Jr.

Respectfully submitted,

Ruben W. Cook
Alabama Disabilities
Advocacy Program
University of Alabama
School of Law
Box 870395
Tuscaloosa, AL 35487
(205) 348-3909

Morris Dees*
Southern Poverty Law
Center
Post Office Box 2007
Montgomery, AL 36102
(205) 264-0286

*Counsel of Record

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